
*A Sketch of the History of the Asylum, or Sanctuary,
from its Origin to the final Abolition of it in the Reign
of James I.*

By the Rev. Samuel Pegge.

To the Earl of LEICESTER.



MY LORD,

THE institution proposed for the subject of the following memoir, is of very ancient and even divine original: and as it has undergone, at times and in different countries, so many alterations and revolutions, and I may add such horrible and scandalous abuses, the history of its various fate and fortune

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may deservedly become a proper object of enquiry and elucidation. The connection of the rite of sanctuary with the civil and ecclesiastical history of this kingdom, and more especially during the reign of popery amongst us, makes it apply very strongly to the views and purposes of the Society of Antiquaries. Although we are now happily delivered from the multifarious encroachments of popery in respect of the pretended claims and immunities of the church in this, as well as other matters, yet it may be well worth while to enquire into the nature and usages of sanctuary, as formerly practised amongst us; partly, for the purpose of rightly understanding those passages in authors where it happens to be mentioned; and partly, that we may more clearly see from what a fruitful source of outrage and disorder we are freed by the laws of the land obtaining, in all cases, their natural and uninterrupted course. It will appear, in the sequel, from the opinions of Papists themselves, that this institution, as managed and conducted in modern times, was pregnant with an infinite deal of evil and mischief; and well it might, when founded entirely in usurpation, superstition, and, we may say, absurdity; since no one can imagine upon any grounds, either of reason or religion, that God all-righteous should ever countenance and encourage, by any privilege of his churches and altars, such acts of villainy and immorality as this rite of sanctuary was then made to do; or should take the persons of known and acknowledged criminals into his more immediate protection; I say *acknowledged criminals*, because the very act of persons betaking themselves to sanctuary always implied the commission, and even the confession, of their respective crimes.

Your Lordship will please here to recollect, that a finished and complete History of the Institution is not intended, but a
Sketch;

Sketch; sufficient, however, it is hoped, to afford a tolerable idea of a practice long since fallen into disuse here. Your Lordship will also perceive, that much use has been made of a digression by Mr. Staveley on this subject [a], inasmuch that this paper may be considered as an enlargement of that piece, by the addition of certain curious particulars from the canon law, and Mr. Stowe's Survey of the City of London [b]. I have no doubt but my learned brethren of the Society, to whose superior knowledge and more extensive reading I willingly defer, may probably furnish many other circumstances and improvements, equally pertinent and entertaining, on the argument; and it is my ardent wish, that some one would be so good as to supply my deficiencies.

A sanctuary, or asylum [c], may be defined to be 'A place privileged by a sovereign, whence, such offenders, or debtors, as fled to it for protection, could not forcibly be taken without sacrilege and impiety [d].'

It has been pretended that Nimrod, on the loss of his eldest son, was the first deviser of the institution [e], by erecting a golden image of him in his temple and palace, to which all that resorted, though murderers, or guilty of other capital offences,

[a] Mr. Staveley, Hist. of Churches, p. 165.

[b] Mr. Stryce's edition, 1754, 2 vol. fol.

[c] The privilege, or immunity, was called *'Ασυλία* by the Greeks, and the Deity presiding *Θεὸς Ἀσυλίας*. Plutarch, Romulus, p. 22, edit. Franc. 1599. What Deity that was, Dionysius Hal. [lib. ii.] says, was uncertain, but the Authors of the Univ. Hist. vol. XI. p. 282. think he was probably Jupiter, though others say, *Deus Lycæus*, Serv. ad *Æn.* II. 761. The particular Deity of the temple one would suppose should be the *Θεὸς Ἀσυλίας*. The word *Asylum* comes not from *α* and *εἶναι*, *traho*, as some have fancied, but from *α* and *σῶναι*. Staveley, p. 166. Hospin. de Templ. p. 77.

[d] Compare Stamford, Pleas of the Crown, II. p. 38.

[e] Gilbert Cognatus apud Hospin. p. 78.

should be absolved from their crimes. But we must not go so high, since even the Patriarchs, who were continually roving about, (and consequently had no temples [f], nor places for any long abode), could not well have any *asyla*. Whence it may fairly be concluded, that sanctuary was no part of the Patriarchal religion, but was entirely unknown in the east at that period; an observation which may be of some use to us hereafter.

But on the establishment of the children of Israel in the Land of Promise, *Moses*, in pursuance of that direction from God, 'If a man lie not in wait, but God deliver him [that is 'smitten] into his hand, then I will appoint thee a place whither he shall flee [g].' *Moses*, I say, upon this, appointed for the Israelites six cities of refuge, (three on one side of Jordan, and three on the other), out of those forty-eight cities allotted to the Levites [h]. The *asyla* being thus selected out of the Levitical cities apparently gave them some slight connection with religion, though there were neither temples nor altars; and statues there could not be; the alliance, however, became much more visible, when afterwards the Temple of Solomon, and particularly the Altar of Burnt-Offerings, obtained the like privilege [i]. The intention here was, as we learn from the

[f] Dr. Stukeley, indeed, thinks the Druids, who, as he supposes, derived their religion from the Patriarchs, had temples of like structure as our Cathedrals; *Archæologia* l. p. 40. *Itin. Cur.* part ii. p. 13. but few, I believe, will concur with him in that notion.

[g] *Exodus* xxi. 13.

[h] *Numbers* xxxv. 6. *Deut.* xix. 4. seq. Three more were to be assigned, when their borders were enlarged. *Deut.* xix. 1. seq. and this, it must be owned, was a most salutary provision; that the manslayer might not have too far to go, or run too much hazard, before he arrived at a place of safety.

[i] The slayer, resorting to the temple, was brought sooner to trial. If found guilty of murder, he was forced away even from the altar, and put to death; if innocent, he was conducted to some city of refuge. *Calmet*, *Dict.* v. *Refuge* and *Asylum*.

Lawgiver

Lawgiver himself, that the manslayer (not the murderer from malice prepencc, for he was assuredly to die [k]), who by misfortune and accident should happen to kill a person, might have a place of security to flee unto [l]; that the unfortunate man, overwhelmed with grief, as well may be, for the calamitous disaster, should not rashly be put to death by an avenger, some hot-headed and exasperated relative of the party so unhappily slain, but brought to a cool and impartial trial [m]. All this was done to prevent the ill effects of that vindictive spirit so predominant in man, by which he would be too apt to judge and punish from his own furious and passionate resentment, though the Almighty had even then declared [n], that vengeance properly belonged to him. The principle proceeded upon was evidently that of mercy and compassion, such as might well become the divine Author of the Institution. Every thing here, your Lordship observes, was most wise and just, the necessary and essential distinction between manslaughter and murder being effectually and most reasonably preserved. I have only given the outline of the Israelitish, or Mosaic, system, for the sake of brevity; and yet nothing needs be added to it, but that access to the refugial cities was to be made easy [o], the sanctuary man was not to stir out of his limits [p], but to remain in his city till the death of the high priest [q].

The *Greeks* appear, at first, to have pursued the like rational method of proceeding, *Plutarch* testifying, that the oratory of

[k] Numb. xxxv. 16. 35. Deut. xix. 3. 11. Exod. xxi. 12. 14.

[l] Numb. xxxv. 11. 22. seq. Deut. xix. 4. seq. Josh. xx. 3.

[m] Numb. xxx. 12. Deut. xix. 6. Josh. xx. 6. 9.

[n] Deut. xxxii. 35.

[o] Deut. xix. 3.

[p] Numb. xxxv. 26.

[q] Numb. xxxv. 25. Josh. xx. 6.

Theſeus

Thebes was a place of refuge for servants, and persons of mean condition, who fled from the powerful and oppressive [r]. But they soon confounded and perverted every thing, making no difference between casualties and premeditated acts of violence, but opening their *asyla* indiscriminately to refugees of all kinds. They seem to have had no thought or intention, though this was a most material and essential point of view, of bringing notorious criminals to trial, but suffered them to continue in the franchise, quite easy and unmolested, as long as they pleased; by which means, they made their Deities, from whom their holy places, temples, altars, and statues, derived all their sanctity, the direct patrons and abettors of the most shocking, the most abominable vices and crimes [s]. The *Grecian* sanctuaries, though so exceptionable and faulty in their frame and constitution, were nevertheless very ancient [t], numerous [u], and disseminated into various parts [w]; the privilege also extended sometimes to a distance from the building [x], as it often did here in England; but, generally speaking, it was thought safest to touch, or to have connection with, the tutelary image [y]. The *Greeks* did not often violate the sanctuary by dragging malefactors with force and violence from it, or as-

[r] Plutarch, *Thebes* versus finem.

[s] Tacitus, *Annal.* III. 60.

[t] That of Cadmus at Thebes, Alex. ab Alexandro III. c. 20. that of the Heraclidæ at Athens, Serv. ad *Æn.* II. 761. VIII. 342.

[u] Staveley, p. 167. Calmet, *Dict.* v. Asylum.

[w] I take the liberty of adding here, that there was an asylum at Troy, Serv. ad *Æn.* II. 761, and that *Hercules Ægyptius* had another in that country for servants or slaves. Herodot. *Euterpe*, c. 113.

[x] Hospinian, p. 80.

[y] See the *Story of Cylon* in *Univ. Hist.* vol. VI. p. 295. edit. 8^o.

faulting

faulting them in it [x]; *Alexander* directed *Megabyzus* to draw and entice a slave from his asylum, if possible, and take him, but not to touch him while he remained in the temple [a]. But, nevertheless, they would infringe the privilege on occasion, as we learn from the insinuation of *Demosthenes*, in regard to himself when he had taken sanctuary, that *Antipater* and the Macedonians would not scruple to profane it with murder [b]. They would contrive again to render the *refugium* of no benefit to the party by starving him, unroofing the building, or firing it, obliging him by such means to desert his situation and come out [c]. Such, in general, was the state of affairs in Greece, till *Augustus* abolished the asylum at *Ephesus*, and the emperor *Tiberius*, remarking the mischievous effects of sanctuaries established upon so bad a model, and the intolerable licentiousness occasioned by them, put an end to them, as *Suetonius* says, *every where* [d]. *Tacitus*, however, expresses the transaction differently, testifying, that he only regulated them [e]. *Jac. Perizonius*, in his Lectures on *Turfellinus*, informs us, that *Tiberius* cited the Grecian cities, enquired whence they had their several rights, and taking away the privilege from many, left it only to the more ancient [f]. Be it as it will; his reformation appears to have had but little effect [g]. Your Lordship sees, that in the climate of Greece the nature of the insti-

[x] There are, however, some instances of this in *Potter's Antiq. of Greece*, I. p. 199. and *Univ. Hist.* VI. p. 296.

[a] *Plutarch. Alexander*, p. 689.

[b] *Idem. Demosthenes*, versus finem.

[c] *Potter, Antiq.* I. c. *Corn. Nepos, Pausanias*, c. 5.

[d] *Suetonius, Tiberius*, c. 37.

[e] *Tacitus, Annal.* III. c. 63.

[f] MS. penes me on *Turfellinus*, lib. ii. p. 285.

[g] *Vide Pitise, ad Sueton.* I. c.

tution was quite altered: in *Judea* it sprang from a motive of tenderness towards innocent men; whereas in *Greece* it proceeded from a blind reverence and devotion to the sacredness of the place of refuge, and the deity, or hero, supposed to preside over it.

The Romans, ever imitative of the customs and practices of the neighbouring nations in matters of religion, appear to have followed in the present instance the depraved and corrupt system of the Greeks. *Evander* was a Greek of *Arcadia*, and *Æneas* came from *Troy*, where *Juno*, one of *Romulus's* goddesses, had an asylum [*b*], if that be not a *prolepsis*. When therefore the great founder of *Rome* had formed in his mind that obvious stroke of policy, the proclaiming an asylum [*i*], for the purpose of filling his empty and newly-erected city with inhabitants [*k*], what plan was he more likely to adopt than that delivered down to him by his princely predecessors, *Evander* and *Æneas*, which included all subjects, even the vilest and the worst of men? *Servius*, and the Scholiast on *Juvenal*, say expressly, that he embraced the model of the asylum at *Athens*, which comes to the same thing [*l*], as has been shewn above. *Livy*, indeed, speaks very tenderly and favourably of this business, as he well may be expected to do, only saying, no regard was had to the condition of the refugees, but that all were admitted whether bond or free [*m*], and so *Dionysius Halicarnassensis* * tum
* vero

[*b*] *Æn.* II. 761. et *Servius* ad loc.

[*i*] *Staveley* speaks of *asyla* at *Rome*; but qu. whether there was any other than this one instituted by *Romulus*?

[*k*] That of *Cadmus* at *Thebes* was probably devised for the same purpose; *Livy* therefore properly styles *Romulus's* project, *vetus consilium*.

[*l*] *Servius*, ad *Æn.* VII. 432.

[*m*] The words are * *Ne vana urbis magnitudo esset, adiciendæ multitudinis causâ, vetere consilio* condentium urbes, qui obscuram atque humilem conciendo
* ad

* vero istuc confluebatur, domesticorum malorum tædio [n], as if only slaves oppressed by their masters had resorted thither. Others, however, speak more freely, and no doubt more truly, namely, that the asylum was open to the most abandoned and profligate. *Juvenal* calls it *infame asylum*, and reproaches his Romans with their base and ignoble descent from it [o]; and *Lactantius* scruples not to say, the individuals were *pestimi quique* [p]. *Plutarch* also declares, that all fugitives were received; that they would neither 'deliver up the slave to his master, the debtor to his creditor, nor the murderer to the magistrate [q]. There is no occasion to multiply authorities, since *Servius*, as we have seen, acknowledges, that this constitution was the same as that at *Athens*.

But were not matters, it may be asked, put on a better and more rational footing, after the establishment of Christianity in the empire? I answer, not at all. The Christian emperors, from whom one might expect the best, were so far from suppressing the old sanctuaries, and their degenerate modes, that they did all they could to increase the number of them, by transferring all the privileges and immunities of the Heathen temples, though so hurtful to the community, unto the Christian churches [r]; and this, from a mistaken and ill-judged veneration for their fabrics and altars [s], and the saints, to whom

* ad se multitudinem, natam e terra sibi prolem ementiebantur asylum
 * aperit.' *Livy*, l. c. 8. where, if I be not mistaken, we should read *vacua* for
vana. See also *L. Florus*, l. 1. 9. *Aurel. Victor*, c. 2.

[n] *Dionys. Hal. lib. ii.*

[o] *Juvenal. VIII. 273.*

[p] *Lactantius, II. c. 6.*

[q] *Plutarch. Romulus*, p. 22. & *de Superstit.* p. 166. & *Univ. Hist. XI. p. 281.*

[r] *Hospinian*, p. 79. *Spelm. Gloss. v. Sanctuarium.*

[s] *Hospin. l. c. Staveley*, p. 165. 168. 170.

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they were respectively sacred. *Boniface V.* who acceded A.D. 609, sensible that great advantages would arise from the institution so modified for the aggrandisement of the church and the increase of its power, authorized and confirmed all sanctuaries in general, about the year 633, ordaining, as we have it in *Platina*, ‘That criminals who fled to churches [r], should not be ‘taken thence by force [u],’ or as *Sigebert* speaks, still plainer and more fully, ‘*Aras et ecclesias esse reis asyla, ita ut fugiens aliquis, quovis crimine patrato, ad sacras aedes, violenter inde non abstrahatur [w],*’ inasmuch that this pope is commonly reputed the founder of that pestilent mode of sanctuary, which afterwards prevailed so generally in the west. Though the industrious *Hospinian* has collected some few instances of it, which are prior to that period [x].

I beg leave, my Lord, to make an observation or two in this plan, for the further clearing and illustrating the subject.

I have termed *Boniface’s* mode of sanctuary *pestilent*, because instead of recurring, as one would expect from his Holiness, to the laudable and rational system of the Hebrews; he embraced and patronized the very worst corruptions of the Greeks and Romans. This best served his turn; and certainly through his ambitious and interested views the churches became so many dens of thieves, traitors, murderers, parricides, in a word, of all kinds of villains [y]. What is worse, the extension of the rite, as at this time established, opened a door, through the encouragement it gave to evil-minded men, by a sure and certain prospect of present security, to the commission of all sorts of

[r] See this explained in the following page.

[u] *Platina*. p. 106. Rycaut’s translation.

[w] *Sigebert*. Gemblac.

[x] *Hospin.* p. 79.

[y] *Stowe*, Survey, l. p. 608. edit. Strype.

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wickedness. Of this the Papists themselves, *Giraldus Cambrensis* [x], *Polydore Vergil* [a], and the council of *Cologne* [b], to name no other authorities, have long since complained. And it was upon this ground, as may be presumed, that the Pontif *Sixtus Quintus*, as I learn from *Perizonius* [c], suppressed all the sanctuaries at Rome. This now is of consequence; for, as we find in Dr. *Smollet*, the same unlimited use of sanctuary prevails in *Italy* at this day [d]: 'I need not enlarge, says he, on the pernicious consequences of this infamous prerogative, calculated to raise and extend the power and influence of the Roman church, on the ruins of morality and good order. I saw a fellow, who three days before had murdered his wife in the last month of pregnancy, taking the air with great composure and serenity on the steps of a church in *Florence*; and nothing is more common, than to see the most execrable villains diverting themselves in the cloisters of some convents at Rome [e].'

The Protestants in general inveigh against and condemn the use of indiscriminate sanctuary, as an incitement to every evil work [f], but I shall only adduce the words of the excellent *Perizonius*; who speaking of the act of Pope *Boniface*, says, 'Invaléscebat jam magis magisque episcoporum superbia, et hinc etiam ipsius vitæ necisque jus desiderabant, ac proin hoc [asylum] instituebant, quod profectò pessimum erat; sic enim

[x] Girald. Cambr. p. 891. edit. 1603.

[a] Polyd. Verg. de Rerum Invent. III. c. 12.

[b] Apud Hospin. p. 81.

[c] MS. Notes, ut supra, tom. iii. p. 526. This particular is not mentioned by Sir P. Rycant.

[d] See also the case at *Malta* this very year, 1784. Lloyd's Evening Post, Oct. 6.

[e] Smollet, Travels, p. 279.

[f] Salmuth ad Panciroll. p. 118.

* *ad omnia scelera ac flagitia aperiebatur fenestra: quod ipsi Gentiles scientes sub Tiberio, Tacito teste, Asyla sustulere* [g].

2dly, It is said above, that the emperors and Boniface invested the churches with the right of sanctuary; by which Polydore Vergil understood all churches [h], and Perizonius justly adds, monasteries. And this is true as to consecrated churches; but oratories and private chapels enjoyed no privilege [i]. Linwood intimates, the privileged churches to be such as had been erected by some pope, archbishop, or bishop [k], which could not fail of obtaining consecration.

A difference was also made between churches, in respect of consequence and reputation, of greater or less sanctity [l]. By the laws of William the Conqueror, whosoever, in after-times, took a person from an abbey, or church of religion [m], was to forfeit one hundred shillings, and restore the person; if from a parish church, twenty shillings; and if from a chapel, ten shillings [n]. It is also said, that sanctuary-men might go thirty paces from the church; and forty, if a cathedral [o]. Of the distance something more may be said hereafter.

But now, though all consecrated churches in general were possessed of the franchise of protecting criminals, yet these did not often resort to inferior or parish churches, and for this ob-

[g] MS. Notes, ut supra, et l. c.

[h] Polyd. Vergil, III. c. 12. and see Haspin. p. 78.

[i] Linwood, p. 256.

[k] Idem, ibid.

[l] Mr. Johnson, in Collection of Canons on archbishop Boniface's Constit. 1261, art. 8.

[m] *Ecclesia religiosius*; meaning, we may suppose, a monastical church.

[n] Wilkins, Concil. I. p. 313. By chapel must be meant a chapel of ease, not a private oratory.

[o] Mr. Johnson, l. c.

vious reason; they could not so well be accommodated there, so comfortably maintained, nor so powerfully protected; for the clergyman, who was often but little able, was obliged to support his refugees [p]; and, as we are told, they were not only to be supplied with victuals, but with raiment, habitation, shoes, &c. *sine quibus corpus ali non potest* [q]. The friends and relations of the sanctuary-man, however, would often be sending in victuals for his use; but in this they were sometimes obstructed [r].

3dly, It has been represented above, that the Christian Emperors first indulged *the churches* with their franchises and immunities, in regard to sanctuary, and that Pope *Boniface* seconded and confirmed them. Certain authors hereupon, attached to the papacy and zealous for its honour and credit, such as *Sigebertus Gemblacensis*, *Marianus Scotus*, *Platina*, and *Albertus Cranzius*, have overlooked the emperors, and, as if there could be any merit in introducing an institution of such an inauspicious complexion, have ascribed it to the pope. But the emperors nevertheless, like *Romulus*, first brought it forth, though the prelates, after *Boniface* had given it his sanction, took it up and nourished it. Indeed, they assumed afterwards the principal conduct and management of it, under their respective sovereigns, and would be so strenuous in asserting the rights of holy church sometimes, as to oppose and withstand their princes, in certain cases [s], though both the church's power and theirs were originally derived from them.

[p] Mr. Johnson ad archbishop Boniface, l. c.

[q] Linwood, p. 255. Pat. Sanderfon, Hist. of Durham Abbey, p. 44.

[r] Archbishop Boniface, l. c. Ottobon. art. 12. The obstruction arose from the evil intention of the persecutor, desirous of making the abode of the refugee as hard and insupportable to him as he could.

[s] Vide infra, Case of Haulev, and of Hubert de Burgh, p. 41. See also Streyte, Memorials, III. 353, relative to a passage in the reign of queen Mary.

Again:

Again: As the privileges issued first from the sovereigns, so were they subject to regulations from time to time by them. Monf. *Gaillard* of the Academy writes, 'All churches before the time of *Charlemagne* were *asyla*, and for all sorts of criminals; but he, by a capitular, A. D. 779, conformable to one of *Carloman* and *Pepin* passed about 744, decreed, that churches should not be *asyla* for criminals who had committed such crimes as the law punished with death: and if he did not go so far as to make it lawful to force a criminal from his asylum, yet, what came to the same thing, he prohibited people from giving them any nourishment [1].' Many instances of the like infractions of sanctuary occur in the Constantinopolitan History. This gentleman then reports the case of a clerk imprisoned by a bishop for a crime, and who, escaping, took refuge in a convent. The bishop claimed his fugitive, but the convent refused to deliver him. *Charlemagne*, however, on hearing the cause, gave sentence in favour of the bishop.

We may depend upon it, that the source of the immunity was the will and pleasure of the sovereign, notwithstanding the pretensions of Pope *Boniface*, or the historians, or the prelates and clergy afterwards. We shall see many clear evidences of this below, when we come to speak of affairs here at home; and therefore, following the example of Sir William *Stamford*, I have inserted it in the definition [2]. *Henry de Knyghton*, indeed, pretends, that the privilege of sanctuary is naturally inherent in the church, and that it was, *inter alia*, one of those rights for which *Becket* suffered. After stating how regardless

[1] Monf. *Gaillard*, Hist. de *Charlemagne*, tom. iii. p. 80.

[2] See Mr. *Staveley*, p. 170. 172. So when king John founded the abbey of Beaulieu, he endowed it with sanctuary, *Rapin*, l. p. 203. See also *Stowe*, Survey, II. p. 614, Ed. *Strype*.

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and irreverent *Henry II.* was, in regard to this rite [10], he proceeds to say, ‘*Et pro hac ecclesiæ causa, et aliis quæ in vita beatisimi Thomæ Cantuariensis plenius recitantur, idem patienter mortem sustinuit, ut vitalem deinceps et debitam reverentiam universali sanctæ matri ecclesiæ Anglicanæ perpetue redderet.*’ This, however, is not true. By the 14th Article, indeed, of the constitutions of *Clarendon*, ‘The charters of those who are under forfeiture to the king ought not to be detained in any church, or church-yard, against the justice; because they belong to the king, whether they are found within churches or without [x].’ The pope actually admitted this article [y]; and the king, with reason and justice, only claims the goods which were his own by forfeiture. Nothing is said of the *persons* either of clergy or laity being forced from sanctuary; nor do I find *Becket* insisting upon any such matter in lord *Lyttelton’s* diffuse and very accurate relation of his case. Inasmuch that it never can be said, that *Becket*, in any respect, suffered in defence of the rite of sanctuary, nor that the rite itself, from any such weak proof as the ill-founded notions of a partial and bigoted historian, was derived from any power independent of the crown.

[10] ‘*Hujus Henrici tempore nullus latro neque raptor, homicida, vel qualifcunque fcleratus gaudere potuit privilegio immunitatis sanctæ ecclesiæ, neque clericus nec sacerdos, quin eos ab ecclesiâ eriperet, et judicio regni altare cogeret secundum eorum delicti quantitatem puniendos, nullam ferens sanctæ ecclesiæ in hac parte reverentiam.*’ H. de Knyghton, apud X Script. col. 2400.

[x] Lord Lyttelton, *Life of Henry II.* vol. IV. p. 418.

[y] Ibid. p. 84.

P A R T II.

AFTER taking a general view of sanctuary as in use anciently and abroad, we come now, my Lord, to consider and examine how matters were carried here in our own island.

Druidism is thought by many to be derived, though not without perversions and corruptions, from the patriarchal religion [a]; but then of this, as was observed above, the rite of sanctuary was no part. Groves and trees were anciently very venerable and sacred things, not only as places of worship, but also as themselves objects of adoration amongst idolatrous nations [b]. Mr. Evelyn also has shewn, that such trees actually obtained an immunity, and grew to be *asyle* amongst them [c]; but that this was any practice of the *Druids* does not at present appear; indeed, we hear nothing of sanctuary of any kind in *Wales*, till long after the introduction of Christianity into that country [d]. *Jeffrey of Monmouth* tells us, that *Dunwallo Molmutius*, who reigned near five hundred years before Christ [e], at a time when *Druidism* was the prevailing religion, ‘established those which the Britains call the *Molmutine laws*, ‘famous among the English to this day. In these, among ‘other things he enacted, that the temples of the gods, as also

[a] Dr. Stukeley, *Itin* part ii. p. 13. Rowland, *Mona antiqua*, p. 55, seq.

[b] Hamilton, *Voyage*, p. 311. Max. Tyrios, *Dissert.* III. § 8. and Dr. Davies on the place. Stillingfleet, *Antiq.* of Lon. p. 474. 546. Bosman, p. 349. 362. Dickinson, p. 192.

[c] Evelyn, *Sylva*, p. 614.

[d] Vide *infra*.

[e] *Speim. Olost.* p. 362. & Selden on *Drayton*, XVI. p. 317.

‘ cities,

cities, should have the privilege of giving sanctuary and protection to any fugitive or criminal that should fly to them from his enemy. He likewise enacted, that the ways leading to those temples and cities, as also the husbandman's plows, should be allowed the same privilege [f]. When Jeffrey, I say, writes thus, one cannot possibly give him credit. I am one amongst those who think Jeffrey not to have been the author of the British History, but only the translator, and perhaps the interpolator, of it; but as to this famous passage, though many later authors, I observe, have received it without scruple [g], it appears to me to be perfectly inadmissible. The Britains, in my apprehension, ploughed little, and had no cities, at that æra. But did not Brute, it may be alledged, come from Troy, where Juno had an asylum? I reply, that the arrival of Brute in this island is itself very disputable, as resting solely on the suspicious credit of the British History; and as to Juno's asylum at Troy, that, as has been before conjectured [h], may possibly be a prolepsis. But do not authors tell us [i], that Ælfred the Great assumed these Molmutian laws into his code? And is not this what Jeffrey means, by saying, the laws of Molmutius were famous among the English to this day? I answer, Sir John Spelman has shewn, that this is not fact [k]; and it is a

[f] Jeffrey of Monm. II. c. 17.

[g] Matth. Westm. p. 29. Alured. Beverl. p. 15. Higden. III. p. 214. Brompton col. 956. Rudborne, in Angl. Sacr. p. 182. Harding, Chron. fol. cxi. 6. Sheringham, p. 125, and many others. But these, who are more modern authors, might be easily misled by Jeffrey.

[h] P. 8.

[i] See many of those writers cited in Note [g].

[k] Spelm. Life of Ælfred, p. 96. Mr. Hearne, indeed, endeavours to invalidate the arguments there used, but does it in a very weak and unsatisfactory manner. Ælfred does not so much as mention the Molmutian laws. V. Sir Henry Spelman in Gloss. p. 362; and Mr. William Clarke, in his excellent Preface to the Welch Laws.

strong presumption against it, that *Molmutius* appears to have followed the *Grecian* plan, according to the fiction of the British History; whereas king *Ælfred*, as we shall presently see, framed his constitution respecting this matter upon the system of *Moses* [4]. To dismiss this business of *Molmutius*, who in all probability neither wrote nor dictated any laws at all [5]; *Jeffrey* pretends, that in his days, and by this measure, 'the murders and cruelties committed by robbers were prevented, and every body passed safe without any violence offered him [m]': a false and most irrational inference; since sanctuaries, upon this prince's model, are not calculated to prevent, but to promote and encourage every outrageous and villainous act, as has been shewn above [n]. Indeed, one can scarcely imagine any thing more likely to generate vice and immorality, except the pernicious doctrines of priestly absolution, the doing evil if good do but come of it, and the compensation of evil by what were called *good works*, such as the founding of monasteries, hospitals, &c.

The Christian king *Lucius*, who flourished about A. D. 180, is said, by *Thomas Rudborne* [o], to have conferred upon the church of *Winchester* founded by him all the foregoing privileges of *Molmutius*, but with no greater appearance of truth [p], since, as this fact depends upon the former, it must necessarily fall with it. Wherefore I shall make no other observation upon

[4] The *Molmutine* laws were Pagan, not Christian, as *Ælfred*'s are. *Sheringham*, p. 125.

[5] *Clarke*, *Præf. ad Leges Wallicæ*.

[m] *Rudborne* says the same, p. 182.

[n] Page 10, 11.

[o] See also *Selden* on *Drayton*, Song 16. *Weever*, *Fun. Mon.* p. 181.

[p] *Marth. Westm.* says, p. 60, that *Lucius* indulged all churches and their cemeteries with the privilege of sanctuary.

Rudborne's

Rudborne's story, than that he is so far right as to deduce the privileges of *Winchester* from a probable original, the authority of a crowned head, and not of a pope of *Rome*.

Sebert, the first Christian king of *Essex*, who began to reign A. D. 604, and died A. D. 616, granted to his church of *Westminster* the great privilege of sanctuary, according to Mr. *Stowe* [g]. This, however, must be all a fiction; since the churches of the West did not enjoy any such privilege at that time [r]; and Mr. *Widmore* will not permit us to believe that this prince ever erected a church at *Westminster* [s].

To go then upon something better assured: *Ina*, king of *Wessex*, about A. D. 690, enacts, that 'if a person who has committed a capital offence shall fly to a church, he shall preserve his life, and make satisfaction according as right requires. If any one deserving of stripes shall fly to a church, the punishment shall be forgiven him [t].' Churches being thus appointed and made asylums, an evident connection of the rite of sanctuary with religion was created, and the connection afforded a very obvious handle for the clergy afterwards to interfere. The fugitive, however, was only to be protected against the rashness and fury of his avenger, for he was still liable to make recompence; and this is consonant to the decree of the council of *Mentz*, A. D. 813, 'Reum confugientem ad ecclesiam nemo abstrahere audeat, nec inde donare ad poenam vel ad mortem, ut honor Dei et sanctorum ejus conservetur, sed rectores ecclesiarum pacem et vitam ac membra ejus obtinere studeant: tamen legitime componat quod inique fecit [u].'

[g] *Stowe*, Survey, II. p. 614. edit. *Strype*.

[r] See above, p. 11.

[s] *Widmore*, Enq. into the foundation of *Westm. Abbey*, Lond. 1743, 4°.

[t] *Wilkins*, Legg. Sax. p. 15.

[u] *Hospinian*, p. 80.

Ælfred the Great ascended the throne A. D. 872, and has inserted in the preamble to his laws the words of Moses, 'Si quis sponte hominem occiderit, moriatur morte. Si eum autem coactus occiderit, vel invit. . . . fit dignus privilegio suo, et iusta gentium compensation. ; si asylum quæret, &c. [w]." The king had been at Rome, but he either did not observe, being then young, or reprobated, the practices he saw there, for it is evidently a Christian, and not a Pagan or popish institution. In the second chapter of his laws he pursues the same sensible plan, ordaining, 'Si quis ad ecclesie mansionem pro qualicunque culpa contugiat . . . habeat trium dierum terminum se ibi abscondendi, nisi reconciliari voluerit.' The term, however, was enlarged to nine days by king Athelstan for thieves and robbers [x]; and again to nine or more, by king Ethelred, if the king pleased [y]; thirty-seven days at Durham [z]; forty days, 1 Edw. VI. [a]; and a year at Rippon [b]; but still it was for the purpose of giving the culprit time to effect a reconciliation; and though the immunity extended to all sorts of crimes, in which, as we are to suppose, even murder was included, yet this, inconsistent as it was with the text in Exodus, where the murderer was surely to be put to death, was agreeable nevertheless to the ideas and customs of the Saxons; the *Weregild*, as they called it, being with them a pecuniary recompence for all crimes, and for murder amongst the rest. It

[w] Exod. xxi. 12, 13, 14. Wilkins, Legg. Sax. p. 29, the word for asylum is *prætorios*, or as it is also called *prætorios*. Spelm. Gloss. v. Fridstoll. The latter accords best with *sedes* or *cathedra pacis*.

[x] Wilkins, p. 34.

[y] Ibid. p. 15 and 110.

[z] Wharton, Angl. Sac. p. 699. Sim. Dunelm. p. 121. Ed. Bedford.

[a] Staveley, p. 176.

[b] Drake, p. 101 of Appendix.

was very absurd, it is true; but it was much more so, to allow of sanctuary for murderers, after the *weregild* was abolished. This however was done without scruple [c]; and therein our ancestors, as Polydore Vergil well observes [d], imitated not *Moses*, but *Romulus*.

King Athelstan became master of the city of York A. D. 937 [e]; and at that time, St. John of Beverley, who died A. D. 721, and was buried in the porch of Beverley-minster, was a saint of great eminence there, and in the highest estimation with this prince [f]. Athelstan, therefore, is thought to be the person, who, from an extraordinary veneration for, and to do honour to, so renowned a saint, granted to that church a very uncommon immunity and privilege [g]. He is said to have conferred also a like franchise on the church of Rippon, in favour of St. Wilfrid [h]. These indulgences, I conceive, were granted, at the time at least, upon the same footing as king Ælfred's were, though with an enlargement both of time and distance, as may be noted in the sequel [i].

In the laws of Hoel Dda, A. D. 943, all sorts of criminals, except murderers, are admitted to sanctuary [k], the right is derived from the crown [l], and weregild is allowed for murder.

[c] V. *supra*, p. 10, 11. Antiquar. Repert. p. 43. *supra*, p. 13.

[d] Polyd. Vergil. c. 12.

[e] Drake, *Eborac.* p. 79.

[f] Weever, p. 181. Drake, *Eborac.* p. LXXXIX and XCI of Appendix.

[g] Drake, *Eborac.* p. 407. Appendix, p. LXXXVII. Leland, Collect. IV. p. 401. Spelm. Gloss. v. Fridtoll. Weever, Fun. Mon. p. 181.

[h] Leland, Collect. IV. p. 110. Drake, p. 79.

[i] Page 31.

[k] Wotton Leg. Wall. p. 384. The Britons called sanctuary *newydd* and *nuddfa*.

[l] *Ibid.* p. 118.

Certain superstitious abuses, however, seem soon after to have crept in, in our island; for in Edgar's Canons, who succeeded A. D. 959, and died 975, priests are admonished to suppress
 ' cultum voluntarium, et necromantiam, et auguria, et incantationes, et divinum hominis cultum, et plura quæ exercentur
 ' in variis præstigiis, *et in cathedra pacis* [m], et in ulmis, et
 ' etiam in aliis variis arboribus, et in faxis, et in multis aliis
 ' phantasmatibus, quibus multi eorum qui non deberent, decipiuntur [n].'
 This string of Canons by Edgar is chiefly employed in giving directions and instructions to ecclesiastics, whence it follows, that though the immunities of churches proceeded originally from the indulgences of the crown, as has been shewn above [e], yet the management of them, both in England and Wales, was intrusted principally to the *clergy*; and from thence, as was before also observed [p], the prelates would often assert the church's rights in opposition to the crown itself. In short, after the royal grants had been once obtained, the churchmen were exceedingly jealous and tenacious of their power, especially during and after the legation of Ottobon, in the thirteenth century, who denounced the sentence of excommunication on every the least infraction of privilege. His constitutions run in a high strain, and, that they might obtain their full effect, were ordered to be published every Lord's day for a year [q].

[m] The Saxon word is *præstigeotum*; and Dr. Wilkins notes in his Glossary, ' An autem corrupte *præstigeotum*, pro *præstetum*, *præstetum* vel *præstetum*, scribatur, vel an vox hæc a pietate, *habituatum*, et *præstet* pax derivetur, affirmare non audeo; illud certa constat, *asyla fugientium* denotare.'

[n] Edgar's Canons, N° 16.

[e] Page 12, 13, 14.

[p] Page 14.

[q] Mr. Johnson's Collect. of Eccl. Laws, in Ottobon, A. 1268.

The

The 6th article of the Confessor's laws goes thus '*Quicumque reus vel noxius ad ecclesiam, causâ prædicii, confugerit, ex quo atrium tenuerit, a nemine insequente ullaatenus apprehendatur, nisi per Pontificem aut ministrum ejus* [r];' and one cannot doubt but the murderer was to be protected as well as other offenders. Mr. Stowe, after stating, that the church of Westminster 'had great privilege of sanctuary, within the precinct thereof, to wit, the church, churchyard, and close, &c.' proceeds to say, the 'privilege was first granted by Sebert king of the East Saxons [s], since increased by Edgar king of the West Saxons [t], renewed and confirmed by king Edward the Confessor;' and then inserts Edward's charter [u]. This charter is very express and full for security of life, liberty and limbs, for persons of *all conditions*, and for *what cause or offence forever* they fled thither; and likewise for their goods, lands, and possessions, all which he asserts he *thereby* took into his special protection. The charter in all probability is spurious; it occurs not in Widmore, in whose work we might expect to find it: on the contrary, he is of opinion the sanctuary commenced from the canonization of Edward by Innocent III. after A. D. 1198, namely, from the high veneration the people had for him, which of course would also be shewn to the place of his burial [w]. But whether the charter be spurious or not, it answers our purpose, as shewing the sense which the compiler, whoever he was,

[r] Wilkins, Leg. Sax. p. 197.

[s] This has been disproved above, p. 19.

[t] Edgar did repair and restore the monastery. Widmore, Hist. of Westminster Abbey, p. 4. seq. but nothing is there said of the sanctuary: so that all this is groundless inference.

[u] Stowe, Survey, II. p. 614.

[w] Widmore, l. c. p. 15.

It may here, however, properly be noted, that there was anciently also a regard and reverence shewn to certain characters and places, which though it amounted not to the dignity and religion of sanctuary properly speaking, yet entitled the fugitive, nevertheless, to a temporary security. Thus it is directed in the Constitutions of king Ethelred, A. D. 1008, "that if a person guilty of a capital offence fled to the king, archbishop, or nobleman, he should be allowed no more than nine days, unless the king should please to indulge him with more. If he had recourse to the bishop of his province, to the alderman, or healeene heapod fæde [x], then he was to be safe only for seven days, unless the great man would allow him longer time [y]." It was a piece of respect and decency due to the eminency of the parties specified, and the peace of the places of their respective abodes; whence Sir Henry Spelman writes, that *πρυθρον* signifies *præterea palatium*, quod palatia regum et "optimum multis legibus a vi et injuria erant immunita [z];" and of this nature, I apprehend, is the *verge of the court*, as it is called, at this day. This at the same time was a laudable expedient for giving the malefactor time, either to exculpate himself, or to make satisfaction; for it follows in the law, relative to this case, "If he be a thief or robber, let him restore what he hath unjustly taken, if he hath it in his possession; or if he hath wasted or embezzled it, let him make it good from his own property if he be able [a]."

Criminals flying to sanctuary were to declare their intention of taking refuge, and then they were not to be obstructed or

[x] This is rendered *summu capitolium*; meaning a *dignitary* in a cathedral, a *precentor* perhaps, or head of the school. Du Fresnoy, v. Capitulus.

[y] Wilkins, Legg. Sax. p. 110.

[z] Spelm. Gloss. v. *Frijstoll*. See also Wilkins, Legg. Sax. p. 197.

[a] Wilkins, Legg. Sax. p. 197.

hindered

hindered from entering the church [d]. On their accession to the place and entering the precinct, they were to confess their respective crimes, or the causes of their repairing to shelter, before a coroner, and to give in their names, all which were to be recorded [e]. At *Durham*, the refuge knocked at the door of the *Galilee*, and men lay ready to let him in at any hour of the night. They then tolled the *Galilee* bell, that it might be known some one had taken sanctuary; and the prior ordered, that the refuge should have a gown of black cloth, with a yellow cross, called St. Cuthbert's cross, at the left shoulder; he was lodged on a grate within the fabric, on the south side, adjoining to the door, and near the altar [f]. But probably the modes of entry varied in different places. Refuges were moreover to be totally disarmed, defensively as well as offensively, and allowed only a pointless knife to carve with [g]. This, in the larger and most frequented sanctuaries, was a very necessary precaution, because these fugitives, being a set of bad people assembled together, would often issue from the privileged place, and committing riots, robberies, murders, &c. [h] bring in thither their stolen goods [i], for which, however, they were liable to be *imprisoned* as long as they remained in the asylum, with liberty nevertheless to leave it, if they pleased [b]. By stat. 32 Hen. VIII. the sanctuary-man was to appear before the governor, and if he had committed any felony was to lose his

[d] Archbishop Boniface, Constitut. 1261. art. 8.

[e] Stowe, Survey, l. p. 607. Lord Bacon, Hist. of Hen. VII. p. 104.

[f] Patr. Sanderfon, Antiq. of Durham Abbey, p. 43. seq. the altar was presumed to be in the *Galilee*.

[g] Stowe, *ibidem*.

[h] Lord Bacon, l. c. Stowe, p. 607, 608. Stat. 28 Hen. VIII. c. 1.

[i] The effects of refugees, if *within* the place, were under protection; but t. H. VII. those *without* were not. Lord Bacon, l. c.

[b] Stowe, *ibidem*.

privilege.

privilege. This seems to have been the case too, after the accession of Henry VII. [i], but I think the delinquent might go into any other place before that time [k]. For the same reason, notorious offenders were to give bond, and others with them, on entering the sanctuary, for their good abearing during their abode there [l]; and if a man did damage to any one, though but to the value of a penny, he was no longer to enjoy the benefit of his present asylum, according to the laws of Hoel Dda [m], but to seek another.

The English sanctuary, with all its faults and imperfections, particularly the natural tendency it had to encourage evil and mischief, was still considered as having a regard to penance; and therefore refugees were required to take an oath, not only to observe the wholesome regulations of the place [n], but also not to prophane the Sabbath [o]; foreigners, not free of the city, often inhabiting there [p], and others taking houses (though they were dear on account of the protection [q]), and exercising their trades [r], in privileged places of extent, as in St. Martin's le Grand and Westminster [s]; at which latter place, they were bound in queen Elizabeth's time, to attend morning and evening service [t], and were provided with two churches, one over

[i] Widmore, Hist. of Westm. Abbey, p. 141.

[k] Hoel Dda, in Wilkins, Concil. l. p. 210.

[l] Stowe, l. p. 607, also ll. p. 615. seq.

[m] Wilkins, *ibid.* Lord Bacon, Hist. of Hen. VII. p. 24.

[n] Stowe, l. p. 608.

[o] *Ibid.* *ibidem*.

[p] *Ibid.* p. 614.

[q] *Ibid.* p. 609. Widmore, p. 141. Dr. Stukeley, *Archæologia*, l. p. 43.

[r] *Ibid.* p. 608.

[s] Widmore, *ibidem*.

[t] Stowe, ll. p. 615. Spelman, Gloss. v. Fridstot.

the

proceeding occurring in authors concerning it, which, it is hoped, may afford some novelty and amusement to the inquisitive reader. These are, to throw them into some method.

1. The extent of the privilege, &c.
2. Formalities on entering sanctuary, and demeanour there.
3. Sorts of malefactors.
4. Deliverance from thence.
5. Infringement of the ordinance,
6. Enumeration of our principal asyls.
7. 21 James I. Proceedings at and after the Reformation, and the total suppression.

1. Some churches, as we have seen [*b*], were deemed more sacred than others; and the parts of sanctuary, it may by parity of reason be conceived, were held in different estimation, so that the fine or punishment upon violation would be greater or less, according to the place whence the sanctuary-man was taken, or where he was assaulted. At Westminster the asylum included the church, church-yard, and clofe, &c. In regard to church-yards, it is written expressly, ‘ecclesiarum sanctuaria, quæ populariter *cemeteria* nominantur [*c*].’ The limits of the asylum were sometimes very extensive. At Hexham ‘there were four crosses [*d*] set up at a certain distance from the church, in the four ways leading thereunto: now if a malefactor flying for refuge to that church was taken or apprehended within the crosses, the party that took or laid hold of him there did forfeit *two hundred*; if he took him within the town,

[*b*] Page 15.

[*c*] Wilkins, Concil. II. p. 183. See Weever, p. 181. Selden on Drayton’s Polyolb. Song 16. Matth. Westm. p. 60.

[*d*] It is probable there were such round Beverley. One of them still remaining is engraved in plate IV. of vol. III. of the new edition of Camden’s Britannia, p. 73. Plate IV. fig. 2.

' then he forfeited *four hundredb*; if within the walls of the
 ' church-yard, then *six hundredb*; if within the church, then
 ' *twelve hundredb*; if within the doors of the quire, then
 ' *eighteen hundredb*; besides penance, as in case of sacrilege; but
 ' if he presumed to take him out of the stone chair near the
 ' altar called *fridstol*, or from amongst the *holy relicts* behind the
 ' altar [*c*], the offence was not redeemable with any sum, but
 ' was then become, *sine emendatione, hostes*, and nothing but
 ' the utmost severity of the offended church was to be expected
 ' by a dreadful excommunication; besides what the secular
 ' power would impose for the presumptuous misdemeanor [*f*].'
 Mr. Staveley observes, and has it from his author, that the *bun-*
dred contained eight pound [*g*], so that the last penalty was
 most immense, nearly as much as the *weregild* for killing a
 crowned head in Wales [*h*]; and indeed, every act of violence
 committed against the rite of sanctuary was esteemed a breach
 of the church's peace, a high crime, and a species of sacrilege [*i*].

[*c*] The veneration for *relicts*, it appears, was at this time very profound,
 ranking with that for the *fridstol* itself. And in Wales, a person might go out
 of an asylum, and be safe, if he carried *relicts* with him; but then the *relicts*
 could not uphold or protect him if he committed any evil acts. Legg. Hoel
 Dda, lib. ii. c. 8. They are held here in the same estimation as a cross or a
 crucifix, v. *infra*, p. 34.

[*f*] Mr. Staveley, p. 173. citing Ric. Prior Hagulfstad. de statu et episcopis
 Hagulfstadenſis ecclesie apud X Script. ch. 13. col. 308. See also Mr. Drake,
Eborac. p. 548, and Appendix, p. xc. Widmore, Hist. of Westm. Abbey, p. 105.

[*g*] Mr. Drake, Ebor. p. 548, takes the *hundred* for *men of the hundred*, but in
 that I think he must be mistaken, as the hundred is said to contain 8 l. and see
 Dr. Thoroton, p. 313, where much the same account is given of the privilege
 at York. One copy there, however, rates the hundred at 6 l.

[*h*] Leg. Wall. p. 199 compared with p. 201. See for this, Gent. Magaz.
 1753. p. 268.

[*i*] Archbishop Boniface, H. 126, art. 8. Linwood, p. 256. and by a law
 of king Alfred, 120 s. a very heavy fine then, was to be paid to the violated
 church on this account. Leg. Alfredi in Wilkinsi Concil. I. p. 191.

The

The bounds at Beverley were a mile round every way [4], and so at Rippon [5]. Those of St. Martin's le Grand in the city of London are described in words, and by a plan cut in wood, in Strype's edition of Stowe's Survey [m]. Lord Lyttelton informs us, that the Welch were particularly strict and superstitious in regard to this ordinance, and adds, that they allowed all criminals, even murderers and traitors, to have security in churches, not only for themselves, but for their servants, and even for their cattle; 'to feed which last considerable tracts of pasture land were assigned, in the whole compass whereof they were sacred and inviolable, nay, with relation to some of the principal churches . . . the right of sanctuary was extended as far as the cattle could range in a day and return at night [n].' The whole town of Hexham, being included within the crosses above mentioned, enjoyed immunity, and the city of York was possessed of it in some degree [o]; whence one sees upon what grounds, the compiler of the British History, in the case of Molmutius above, feigned that cities were privileged by him. The part of a church most revered was the altar, and the *fridstol*, or stone-chair. This chair at Beverley was inscribed, 'Hec sedes lapidea Freedstoole dicitur, i. e. Paris cathedra, ad quam reus fugiendo perveniens, omnimodam habet securitatem [p].'

[4] Leland, Collect. II. p. 101. Drake, *Eborac.* p. LXXXVII and xc of Appendix.

[5] Leland, *ibid.* p. 110. Mr. Drake, l. c. p. xc1, xc11. *Leuca* there meaning a mile.

[m] Stowe, Survey, l. p. 611. 613. edit. Strype, where see the regulations prescribed by Henry VI.

[n] Lord Lyttelton, Life of Hen. II. vol. II. p. 358.

[o] Drake, *Eborac.* p. 548.

[p] Spelm. Gloss. v. Fridstoll. The inscription is put in a different tense in Drake, *Eborac.* p. xc1. and has other small variations. See Camden, col. 891. It stands now against the South wall of St. John's chapel in theminster. The inscription has been long gone. R. G.

life and limb, and not to protect debtors, or interfere with actions of account [e]. This undoubtedly was the design of the institution originally [f]; but the lords could not carry their point, as we find by the proceedings of our sanctuaries in after-times. Every thing, consequently, relative to debtors, their goods and chattels, was an abuse and perversion of the rite [g], though in tract of time they got shelter in sanctuaries, and the protection went so far, as to secure their goods and effects [h]. Thus the new templars refused to deliver up *Hubert de Burgh's* money to the king, Henry III. without his consent [i]. This extension of privilege occasioned much evil and iniquity, as knavish and dishonest men would often run into sanctuary, in order to defraud their creditors, and to avoid paying their just debts. We have a clear proof of this, in the debtors' being obliged at last to swear, that they did not claim privilege and protection for the purpose of cheating their creditors, but only for the safety of their persons, when they were not able to pay [k]. One species of fraud, in this line, was intolerable; a sanctuary-man would bring into his fastness stolen goods or merchandise [l], with intent to live upon them [m]. But now, the sanctuary-man, as Mr. Johnson tells us, was 'not secured from 'pecuniary satisfaction, much less from penance, nor from pay-

[e] Collier, Eccles. Hist. I. p. 568. Staveley, p. 173.

[f] Stowe, Survey, II. p. 614.

[g] What is said above, p. 31, of the security of cattle in Wales, is spoken of the cattle of felons.

[h] Dugd. Bar. I. p. 697. he, however, thought proper to consent.

[i] Ibid. p. 697.

[k] Temp. Eliz. Stowe, Survey, II. p. 615, where the form of the oath may be seen.

[l] V. p. 15.

[m] Stowe, Survey, I. p. 608. Ottobon 1268. art. 12.

'ing his debts [n]:' on the contrary, he was required, in queen Elizabeth's time, to deliver in upon oath a schedule of his debts, and of his effects wherewith he might make present payment, and to swear, that he would labour and do his utmost to satisfy his creditors [o]; a very just regulation.

4thly, A fugitive felon betook himself to sanctuary for his own benefit and security, and therefore might leave it when he pleased [p], on making his peace, we will suppose, with his adversary, obtaining his pardon, or from any other cause that might enable him to extinguish his asylum with safety. Some of these justifiable causes were absolutely necessary, for otherwise if he came out voluntarily, and was found abroad, the avenger might kill him [q]. It appears, however, from a passage in *Hoel Dda*, that in *Wales* a sanctuary-man might safely go out of bounds, if he carried a *relick* with him [r]. A competent time was allowed, as has been shewn [s], for the purpose of reconciliation, and therefore he was not to burthen the church unto which he had resorted, for ever [t]. Wherefore, after entertainment and security for the time allowed, a refugee, if a layman [u], was bound to abjure his country [x] (if he did

[n] Mr. Johnson on archbishop Boniface's Constit. 1261. art. 1. Linwood, p. 256.

[o] Stowe, Survey, II. p. 615.

[p] Ibid. I. p. 607. v. supra, p. 30.

[q] Hospin, p. 78. See above, p. 5.

[r] Wilkins, Concil. I. p. 210. et supra, p. 31.

[s] Page 29.

[t] This is different from the case of debtors in sanctuaries of that extent, who lived by their own labour.

[u] Clerks were not bound to abjure. Linwood, p. 256, but yielding themselves up to the laws of the realm, might enjoy the liberties of the church, and so be delivered to the ordinary. Antiquar. Repert. I. p. 175.

[x] The proper term was *foris jurare*, v. Spelman in voce, where, however, we should read *nec redeat* for *nec videat*, as in Dr. Wilkins, edit. p. 198. The form of the oath is in Antiquar. Repert. I. c. See Stat. 32 Hen. VIII. c. 12.

not do it before), and swear not to return without the king's licence. Then taking a crucifix [y] in his hand as a *caduceus* to shew he was under protection [z], whosoever seized him on his journey, took him from the highway, or slew him when taken thence, was liable to inflictions as for sacrilege [a]. He was to take the direct road to the next port, or the port assigned him [b], and embark the first opportunity. And if, after endeavouring forty days to get a passage abroad, by going every day into the water up to his knees, or above, he did not succeed, he was to return to his sanctuary [c], and by 21 Henry VIII. the abjured person was to be marked by the coroner on his thumb; and, if he refused to take his passage at the time appointed by the coroner, he was to lose the benefit of sanctuary [d]. It should seem that, instead of abjuring for the purpose of going abroad, he might, by the Act 21 Henry VIII. take his *abjuración* to any one sanctuary, there to remain a sanctuary-man *abjurat* during his natural life; and if afterwards he came out, without the king's licence, he was to suffer in the same manner as if he had abjured the kingdom, and returned [e]. It seems too, that not more than twenty persons at a time were to be admitted as sanctuary-men in one place [f].

A query is started in Linwood, whether a sanctuary-man could be taken out of his asylum by a bishop; and he is of

[y] V. infra, p. 41. Linwood, p. 256. Antiq. Repert. l. c. Sanctuary-men wore cross keys on their garments in a procession at Westminster. Strype, Mem. III. p. 310.

[z] Archbishop Boniface, Constitut. 1261. art. 8. Antiq. Repert. l. c.

[a] Boniface 1261. art. 8.

[b] Antiq. Repert. l. p. 175.

[c] Ibid. l. c.

[d] Stat. 21 Hen. VIII. c. 2.

[e] Stat. 28 Hen. VIII. c. 5. also, 32 Hen. VIII. c. 12.

[f] Stat. 32 Hen. VIII. c. 13.

opinion he might; namely, for the purpose of being shut up in a monastery of a strict order for the doing perpetual penance, or punished in any other ecclesiastical way [g]. *Jeffrey*, natural son of Henry II. and archbishop of York, took sanctuary A. D. 1191 at St. Martin's priory at Dover, and was dragged from the altar in his archiepiscopal vestments through the dirty streets, and committed to the castle there, by order of *William Longchamp*, bishop of Ely [h]. William at that time was also the pope's legate, and might perpetrate this act of violence, either by virtue of his legatine power, or as a prelate of the church. *Hubert Walter*, archbishop of Canterbury, took *William Longbeard*, a mover of sedition, about 1196, from the church of St. Mary le Bow, and hung him in chains [i].

5thly, Offences against the privilege of sanctuary were thought very heinous, even worthy of divine vengeance [k]. *Leland* reports, that *Thurfin*, a knight, was instantly stricken with a disease, for pursuing a person in the church with a drawn sword [l]. Infraction was deemed a species of sacrilege [m], and was punished sometimes with the loss of life and goods [n]. *Mauric*, a Welch king, was excommunicated by *Joseph*, bishop of Llandaff, A. D. 1034, for this cause [o]. When the disgraced and persecuted foreigners, A. D. 1234, took sanctuary, and *Peter de Rupibus*, the powerful bishop of

[x] Linwood, p. 257, where the reasons of his opinion may be seen.

[g] Rapin, I. p. 240.

[h] Ibid. Diceto, col. 691.

[i] See charter of Edw. Conf. in Stowe's Survey, II. p. 614.

[l] Leland, Collect. IV. p. 103. ex vita Joan. Beverl. I look upon this to be the same case with that of *Trufen*, p. 104, where for *petiit* we ought to read *petiit* from p. 103.

[m] Supra, p. 26.

[n] Du Fresne, v. Sanctuarium. Waeer, p. 491.

[o] Wilkins, Concil. I. p. 310.

Winchester.

Winchester, repaired to his cathedral, it was not thought proper to force him thence [p]. And so late as the reign of king Henry VII. the king would not take *Perkin Warbeck* from his sanctuary, but allured him out of his hold by promise of life and pardon [q], though Perkin must have been considered as a rebel and traitor. See the case of Alexander and Megabyzus above, p. 7.

But notwithstanding this general opinion of the sanctity of privileged places, yet in defiance thereof, and the severe penalties annexed to infractions, breaches of sanctuary very frequently happened. King *Henry the Second* from his strictness in regard to justice, is said by *Knyghton* to have shewn no reverence at all for the *asylum*; but to have taken delinquents from churches without scruple, both clergymen and laymen, in order to bring them to punishment [r]. *William de Pererel* durst not trust to the privilege of the convent he had retired to, after poisoning the earl of Chester [s]; and archbishop *Boniface* complains, that sanctuary-men were often in his time, A. D. 1261, forced from churches, church-yards, or public roads [t]. In 1378, the archbishop, *Simon Sudbury*, complained in parliament, of the invasion of the franchises of holy church, by the murder of one *Robert Hauley*, a gentleman, who had fled to the abbey-church of *Westminster*, and was there slain at the high altar, while the priest was officiating. A servant also belonging to

[p] Rapin, I. p. 310.

[q] Lord Bacon, p. 105.

[r] Knyghton, apud X Script. col. 2400.

[s] Lord Lyttelton, Life of Hen. II. vol. II. p. 289. See also an Instance of Contempt, p. 359.

[t] Archbishop Boniface, Constitut. art. 8. See the story of *Hubert de Burgh* below.

the:

the church, who interposed to preserve Hauley, underwent the same fate [u].

Infringements of privilege, however, seldom happened, but they were complained of, and redressed [w], as well may be expected from the tenderness and extreme strictness of the prelates, in these times, in regard to the rights of the church. The church of Westminster was shut up about four months, on account of the profanation of it by the murder of Hauley, as above; the offenders were all of them excommunicated; a large sum of money was paid to the church, and in the next parliament at Westminster the privileges of sanctuary were confirmed, with this exception, that the goods of persons taking sanctuary should be liable to pay his debts [x]. I shall report at large the case of the great justiciary and favourite of Henry III. *Hubert de Burgh*, earl of Kent, as being not only in point, but affording also several other circumstances illustrative of our subject. About 1232, Hubert falling into disgrace with his master, took sanctuary in *Merton* priory, but the king commanded the mayor of London to force him from it, and *Hubert* fled to the high altar. This was afterwards countermanded on account of the sacredness of the sanctuary, with other political reasons. Earl *Hubert* then came from the fastness of himself, but soon took refuge in a small chapel at *Brentwood* in Essex [y], taking a cross [z] in one hand, and the host in the other. These, however, were forced from him, his feet were

[u] Collier, *Eccles. Hist.* I. p. 568, or Mr. Widmore, *Hist. of Westm. Abbey*, p. 194, where the story is more circumstantially related. See also the case of *Humph. Stafford*, t. H. VII. in *Staveley*, p. 174. *Stowe*, *Surv.* I. p. 608.

[w] *Stowe*, *Surv.* I. p. 606. 608. II. p. 615. *Leland*, *Collect.* IV. p. 110.

[x] *Widmore*, *History of Westminster Abbey*, p. 105.

[y] A chapel of ease to South Weld, Newcourt, II. p. 646.

[z] This seems to be called a crucifix above, p. 35.

* chained

chained under his horse's belly, and in that ignominious manner was he conducted to the Tower. The whole body of the clergy were alarmed at this, and the bishop of London declared to the king, that he would excommunicate all those who were concerned in this breach of the church's privileges. The king ordered *Hubert* to be sent back to the chapel, but commanded the sheriffs of Hertford and Essex to guard the chapel so strictly, that the prisoner might neither escape, nor receive victuals from any person, which was done by making a ditch about the bishop's manor-house and adjoining chapel. *Hubert* then yielded himself to the sheriffs, who carried him to the Tower, fettered and chained. His affairs being in part made up, he was sent to the castle of the *Devises*, but from thence he escaped to a neighbouring church, where his pursuers finding him before the altar with the cross in his hands, dragged him thence by violence, and brought him back to the castle. The church was in the diocese of *Sarum*, and the bishop, upon this outrage committed against the privilege of the church, repaired to the castle, to try to persuade the governor to remit *Hubert* to the church, but his solicitations proving ineffectual, he excommunicated the whole garrison, and preferred a complaint to the king: the bishop of London, and some other prelates, joined him, and they so pressed the king, that he ordered the prisoner to be restored to his sanctuary. This, however, was of small benefit to *Hubert*, as the king commanded the sheriff of the county to prevent any person from bringing him victuals. On the morrow he was rescued by a troop of armed men, and escaped into *Wales*, and at last died peaceably [a].

When the presumptuous dared not infringe the ordinance directly, for fear of the penalties and censures, they would often

[a] Dugd. Bar. I. p. 696. Rapia, p. 306.

find means of doing it in effect. One method was, by blockading and starving the prisoner, as in earl *Hubert's* case above [b]; archbishop Boniface complains of this mode of infractions, A. D. 1261, and subjects the aggressors to censure [c]. Churches sometimes were even fired to cause the refugees to come out [d]. Prisoners, again, were sometimes persuaded to leave their asylum, as *Perkin Warbeck* was above, on terms and conditions, such as the preservation of life and liberty [e]. In this, however, they were sometimes cheated and deceived, being seized, or perhaps killed. Thus the emperor *Zeno*, to induce *Basiliscus* to quit his sanctuary, promised not to shed his blood; but nevertheless he cast him, with his wife and children, into a dry cistern, where they perished [f].

6th, It has been observed, that though all churches were privileged with sanctuary, yet the inferior ones were not often resorted to [g]. Instances, however, are not wanting in history, and perhaps many, of offenders repairing to common churches or chapels [h]. This, my Lord, makes it necessary to specify some of the principal asylums in this kingdom, for I do not pretend to name all, and I shall place them in alphabetical order, adding some few authorities.

[b] Vide supra, p. 7. Lord Bacon, Hen. VII. p. 204.

[c] See his Constitutions, art. 8. and Ottobon, A. 1268. art. 12.

[d] Dugd. J. c. p. 695. Ottobon. l. c. excommunicates burners and breakers of churches. See Flor. Vigorn. p. 640, or Godwin de Præful. p. 730.

[e] Smollet, Trav. p. 279.

[f] Perizon ad Turfellin. III. p. 473. MS. ut supra. Belisarius played Syllorius much the same trick, Idem. ibid. p. 490. and Phocas, in like manner shamefully broke promise with Constantia wife of Mauritius. Idem. ibid. p. 514.

[g] V. supra, p. 12.

[h] Story of Hubert de Burgh, above.

Aberdaron.

Aberdaron, Wales [a].
 Abingdon [b].
 Armethwaite, Cumberland [c].
 Beaulieu, Hants [d].
 Beverley, Ebor. [e].
 Battle-Abbey, Suffex [f].
 Colchester [g].
 Derby [h].
 Durham [i].
 Dover [k].
 Hexham, Northumberland [l].
 Lancaster [m].
 Lechlade [n].
 London; St. Martin's le Grand, and Temple.
 Manchester [o].
 Merton Priory [p].
 Northampton [q].
 Norwich [r].

- [a] Girald. Cambr. Defc. Cambr. c. 8. Lord Lyttleton, II. p. 359.
 [b] Charta Kenulphi regis in Du Fresne, v. Sanctuarium. Staveley, p. 174.
 [c] Supra, p. 28.
 [d] Camden, Brit. col. 135. Lord Bacon, Hist. Hen. VII. p. 104. Rapin, I. p. 263.
 [e] Spelm. Gloss. v. Fridstoll & Sanctuarium. Camden, Brit. col. 891. Drake, Eborac. p. LXXIX of Appendix.
 [f] Camden, Brit. col. 209. p. 29. above. Fuller, Ch. Hist. lib. iii. p. 1.
 [g] Lord Bacon, p. 11. Staveley, p. 174.
 [h] Stat. 32 Hen. VIII. c. 12. All Saints Church was then collegiate.
 [i] Pat. Sanderfon, Antiq. of the church of Durham, p. 43. Staveley, p. 43.
 [k] Antiq. Repert. p. 175. supra, p. 36.
 [l] Staveley, p. 173. Richard, prior Hagustald. ut sup. p. 25.
 [m] Stat. 32 Hen. VIII. c. 12. Staveley, p. 176, has *Launceston*.
 [n] Carta H. III. in Du Fresne, v. Sanctuarium.
 [o] Stat. 32 Hen. VIII. c. 12.
 [p] Supra, p. 38.
 [q] Stat. 32 Hen. VIII. c. 12.
 [r] Stat. 32 Hen. VIII. c. 12.

G

Ripon

Ripon [r].

St. Martin's le Grand, London [t].

St. Mary le Bow, London [u].

Temple, London [w].

Wells [x].

Westminster [y].

Winchester [z].

York [a], was probably granted by Edward the Confessor [d].

In Scotland, Holyrood abbey near Edinburgh afforded a protection to debtors. Its precincts including the park and a space as far as Duddingston is still a place of refuge to them, and has its bailey who keeps courts and punishes offenders within his jurisdiction [c].

7th, The immunities and privileges of the church in regard to sanctuary appear never to have run higher than in the 13th century; witness the constitution of archbishop *Beniface*, A. D. 1261, and of *Ottobon* the legate, A. D. 1268. This is said in respect of criminals, for as to debtors, and all the evil doings respecting them, we hear but little of them either before, or at that period. Indeed, they seem to be the growth of after-times, to be all encroachments, and an unjustifiable extension

[t] Leland, Collect. IV. p. 110. Dogd. Mon. I. p. 172. Drake, Eborac. p. xc1 of Appendix.

[u] Weever, p. 300. Stowe, Surv. I. 606 seq. It was given by king Henry VII. to *Westminster*, p. 612. II. p. 615. Newcourt, Repert. I. p. 424, seq. Supra, p. 27.

[w] Supra, p. 36.

[x] Weever, p. 441.

[y] Stat. 32 Hen. VIII. c. 12.

[z] Weever, p. 491. Stowe, Surv. II. p. 614 seq. Antiq. Repert. p. 43.

[a] Supra, p. 36.

[d] Spelm. Gloss. v. Fridstoll. Drake, Eborac. p. 548.

[e] Mr. Drake, p. 547, where *Alfred* should be *Alfric*, though he is called *Alfred* in Leland, Collect. IV. p. 102.

[c] Pennant's Tour in Scotland 1772, P. ii. p. 246.

of

of the church's power, never intended to be granted by our princes [d].

The rite, as we have seen, was closely connected with religion, especially with the popery of later times; wherefore, it may easily be imagined, the privilege would undoubtedly undergo some material alteration and regulation at the time of the Reformation.

Henry VIII. having resumed the supremacy, it was confirmed to him by statute in his 26th year; and in the same act, offenders in any kinds of high treason were not to be admitted to the benefit or privilege of any manner of sanctuary [e].

The monasteries being dissolved before 1540, and consequently not continuing privileged places any longer, sanctuaries were then confined to parish churches and their church-yards, cathedral churches, hospitals and churches collegiate, and all churches dedicated used a parish churches, and those of Wells, Westminster, Manchester, Northampton, Norwich, York, Derby and Lancaster [f]. Whereupon it may be observed, that though Henry would not venture to deprive the churches of an acknowledged privilege, which they had long and legally been possessed of, because the body of the clergy would have clamoured excessively, had he attempted that, yet these cities and towns were intended to be the principal places of resort, and they were selected accordingly at proper distances, and very commodiously dispersed over a great part of the kingdom.

Immunity, at the same time, was not to be allowed to persons committing murder, rape, burglary, robbery in the highway or in any house, or in any church or chapel, or who shall

[d] V. *supra*, p. 37.

[e] Stat. 26 Hen. VIII. c. 13. § 3.

[f] Stat. 32 Hen. VIII. c. 12.

burn wilfully any house, or barn with corn; so that an excellent reformation was hereby made in regard to crimes, and the privilege judiciously limited and confined. It was restrained again, 1 Edward VI. when horse-stealers, takers of goods out of churches, and such as refused to plead, were excluded.

Queen Mary, on the re-establishment of popery, restored the rite of sanctuary at Westminster to its wonted vigour [g]; but in the next reign, A. D. 1566, a bill was brought in to take away sanctuary for debt, but it miscarried [h]. By statute 1 James I. c. 25. § 34. the old usage of sanctuary was totally abolished. The name, *Asylum*, has been of late revived, and imparted to a very laudable and benevolent foundation of a very different kind.

I beg your Lordship's indulgence and pardon for ingrossing your time and patience with a detail of such enormous length. I have the honour of being,

My Lord,

your Lordship's

most obedient servant,

SAMUEL PEGGE.

[g] Strype, Mem. III. p. 316. 383.

[h] Widmore, History of Westminster Abbey, p. 141.